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and Gregg Roman*

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

LISA BARBOUNIS	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
-vs-	:	NO. 2:19-cv-05030-JDW.
	:	
	:	
THE MIDDLE EAST FORUM and	:	
GREG ROMAN (<i>individually</i>),	:	
	:	
Defendants.	:	TRIAL BY JURY
	:	

**THE MIDDLE EAST FORUM’S MEMORANDUM OF LAW IN SUPPORT OF ITS
MOTION TO AMEND ANSWER TO ASSERT COUNTERCLAIMS**

As MEF has long suspected, and as newly uncovered evidence has now revealed, in 2018, Plaintiff/Counterclaim Defendant Lisa Barbounis (“Barbounis”) devised a plan to emigrate to the United Kingdom to start a new life with a man named Daniel Thomas (“Thomas”), whom she met through her work at MEF, and with whom she soon after began a sexual affair. Apparently motivated by her desire to move to the United Kingdom and pursue her relationship with Thomas, Barbounis developed a conspiracy to pay for this scheme by diverting MEF funds to Thomas, by using MEF funds and resources to travel to the United Kingdom and Europe to spend time with Thomas, and ultimately, by levying sexual harassment and assault allegations

against MEF and its director, defendant Gregg Roman (“Roman”) in the hopes that with such allegations she would secure a large financial settlement that would fund her new life in the United Kingdom.

As her relationship with Thomas fell apart and her scheme was at risk of being revealed to MEF and others, Barbounis resorted to an extended campaign of threats against Jazmin Bishop (“Bishop”), Thomas’s significant other and the mother of his children, even invoking the power of the office of her current employer, Congressman Randy Weber, in an effort both to preserve her adulterous relationship with Thomas and to ensure that her illegal diversion of MEF funds to Thomas would remain hidden. Until very recently, she had succeeded.

Barbounis’ conduct in carrying out her scheme has been both extreme and outrageous, and the harms that Barbounis has caused MEF and Roman are substantial. Having finally uncovered the evidence of Barbounis’ unlawful conduct, MEF now seeks, through the amendment of its answer and the assertion of the Counterclaims attached hereto, to begin the process of repairing the damage she has caused.

Accordingly, MEF requests leave to amend its Answer to assert Counterclaims for breach of duty of loyalty, conspiracy and fraudulent misrepresentation against Barbounis.

A. Facts And Procedural History.¹

Lisa Barbounis began her employment with MEF on or about October 16, 2017. She was hired as an Executive Liaison for MEF and continued in that role until January of 2019. From the inception of her employment until November 5, 2018, Barbounis reported to Defendant Gregg Roman, the Director of MEF. Barbounis and Roman quickly developed a friendly

¹ As this Court is undoubtedly quite familiar with the background and procedural history of this matter, MEF sets forth only those facts pertinent to its Motion to Amend.

working relationship, and Barbounis liberally shared details of her personal life with Roman, including the most intimate information about her health, her emotions, her marriage, and her children. *See* Counterclaims Exhibit B.

1. Barbounis Conspires With Thomas To Cover Up Misappropriation Of MEF Funds.

In May of 2017, MEF began working with Stephen Christopher Yaxley-Lennon, better known by his alias Tommy Robinson (“Robinson”), a United Kingdom-based activist. In the Spring of 2018, Barbounis began working on MEF’s behalf in support of Robinson. Barbounis’ first point of contact in this endeavor was with Thomas , another United Kingdom-based activist, who was organizing a rally to support Robinson. At the behest of Barbounis, MEF provided Thomas with \$32,000 (all dollars at USD) to fund a rally to show support for Robinson, who had recently been jailed for contempt of court. MEF entered into a contract with Thomas that detailed the methods and means by which MEF’s money would be spent and detailed the specific costs of the rally MEF would be funding. *See* Counterclaims Exhibit E.

On or about June 8, 2018, Barbounis traveled to London with Patricia McNulty, another MEF employee, to supervise and attend the rally that MEF had funded. *See* Counterclaims Exhibit F. While in London for the rally, Barbounis met Thomas in person for the first time and almost immediately, the two began an adulterous sexual relationship, and Barbounis began neglecting her job duties and responsibilities to MEF as she devoted substantial attention to her sexual relationship with Thomas.. *See* Counterclaims Exhibit A.

At the time of the rally or shortly thereafter, Barbounis became aware that, of the \$32,000 provided to support the Robinson rally, Thomas had misappropriated at least \$7,000 for his own personal use. *Id.* This misappropriation of funds was not authorized or approved by MEF or Roman, who until 2020 had no idea that it had occurred because Barbounis had effectively

hidden her illegal actions and threatened others who attempted to reveal her misdeeds to MEF. Thomas used the money from MEF to help move his family into a newer home in a nicer area, and Barbounis repeatedly assured Thomas that she would not tell MEF management about his misappropriation of funds. *Id.* Indeed, despite her position with MEF as an employee and director and her duties to the organization, Barbounis never told MEF's directors that monies had been misappropriated.

Between June 2018 and November of 2018, Barbounis traveled on several occasions to the United Kingdom to continue her affair with Thomas. Thomas reports that Barbounis showed up "unannounced" in the United Kingdom to visit him and that during these visits, Barbounis and Thomas would stay together in the same hotel room (sometimes unwittingly paid for by MEF), engage in sexual relations, and use illegal drugs. *Id.* Indeed, Thomas reports that he and Barbounis would use cocaine "every time I saw her," and "every time we were out, she would ask me to get it and we would do cocaine all night," and estimates that he and Barbounis would use "five, six hundred dollars of cocaine every evening." *Id.*

Barbounis also sent Thomas money and other resources at various times, including approximately \$1,000 in cash and a credit card that Thomas used to buy Christmas presents for his children.² *Id.* During this time, Barbounis told Thomas that she was unhappy with her family life, her husband, and her job, and that she wanted to leave the United States and move to join him in the United Kingdom. *Id.* Thomas reports that Barbounis confided in him that, to fund her anticipated move to the United Kingdom, she had concocted a plan to enrich herself illegally at the expense of the Middle East Forum by asserting that Roman had inappropriately

² The source of these funds is presently unknown to MEF, but its investigation is continuing. Due to Barbounis' acute financial problems during this timeframe, including a six-figure IRS lien, MEF believes it possible that the money Barbounis sent to Thomas belonged to MEF.

pressured her to engage in sexual activity with him, and that she would make “loads” from this scheme. *Id.*

According to Thomas, Barbounis told him that, “I’ll say, ‘Gregg’s done this, Gregg’s done that. And then I’m going to take it to court and get, and they’ll have to pay out. They’ll pay me loads. They’ll pay me loads, and then I’ll have enough money to do whatever the hell we want to do.’” *Id.* Thomas further stated:

[Barbounis] had it in for you, Gregg. She had it in for you. From, from the time we ever spoke about you, she wanted your job. And then when she realized she couldn’t get the job or something, then she wanted to go down the route of destroying you, destroying you and making ‘loads’ of money from it. I had many conversations about that with her, um, over that, so that w- that’s definitely something that was, uh, was definitely on her, on the plate from very early on from me speaking to her.

Id.

Due to her many and protracted trips to the United Kingdom and her relationship with Thomas, Barbounis’ work performance at MEF began to suffer and her mistakes and errors increased, including mathematical errors involving seven-figure disparities. *See* Counterclaims Exhibit H. On October 31, 2018, Marnie Meyer, MEF’s human resources manager, and Barbounis met to discuss these issues and, in keeping with the scheme she had divulged to Thomas, Barbounis for the first time alleged that Roman had inappropriately pressured her to engage in sexual activity with him during their trip to Israel some seven months prior. Based in part on Barbounis’ allegation, Meyer prepared a handwritten note to Daniel Pipes, President of MEF, informing him of issues in the office, including those raised to Meyer by Barbounis. Pipes investigated the allegations raised by Meyer, including those made indirectly by Barbounis. Pursuant to the scheme she had divulged to Thomas, Barbounis informed Pipes that she desired a

change in job duties and that she believed it necessary for Roman to be removed from his position. *See* Counterclaims Exhibit J.

2. Barbounis Relationship With Daniel Thomas Turns Sour.

On November 23, 2018 Daniel Thomas's father, Russel Thomas, wrote to Barbounis aware of the MEF funds and asking her to make this a "regular" payment. *See* Counterclaims Exhibit L. Russel Thomas wrote: "Daniel has a wife and three children. He is dedicating himself to the developing [Tommy Robinson] movement but at the financial detriment of his personal life. I know you have recently financially help him which is much appreciated, however, Daniel needs, or more importantly his family needs some kind of financial stability. Would it be possible for you to arrange some form of 'regular' financial assistance directly to Daniel or perhaps his wife?" *Id.*

On December 10, 2018, Pipes wrote to Barbounis with a concern that Barbounis was neglecting her duties to MEF: "I have the sense that your position at MEF is distinctly less important than your activities with Tommy Robinson. This is not good." *See* Counterclaims Exhibit M. Pipes added that he was concerned Barbounis had taken a long period off from work to do work for Robinson without telling Pipes or asking him whether doing so was permissible. *Id.* Barbounis acknowledged the validity of Pipes' concerns: "I can see why you would feel that way. And all I can do is apologize and do better. The Tommy stuff was something I was good at. I finally felt like I was contributing. I can see why it looks the way it does. I guess I got carried away. I thought I was doing the right thing. Certainly wasn't trying to neglect MEF or hide things from you." *See* Counterclaims Exhibit N. Despite the representation that she was not trying "to hide things" from Pipes and MEF, Barbounis was doing precisely that, as she did

not disclose that Thomas had misappropriated approximately \$7,000 USD that MEF provided for the Robinson event.

Barbounis also consistently disregarded the admonition from Pipes that she focus on MEF work. She took a trip from January 28 to February 5, 2019 to Brussels, Belgium to continue her sexual affair with Thomas and while there, Barbounis stayed with Thomas in a hotel room and engaged in sexual activity and illegal drug use. *See* Counterclaim Exhibits A and O. While in Brussels, Thomas told Barbounis that he was suspending or ending their sexual relationship. *See* Counterclaim Exhibit A. Barbounis reacted very poorly to Thomas suspending or ending their sexual relationship and protested vehemently against his decision.

On February 16, 2019, Thomas wrote Barbounis: “You’re making things very intense for me right now Lisa, I don’t like the direction all of this is taking. I’ve asked my father please help me to receive the income I need to do this, I need you to tell me how much money I’ve taken so I can start making payments to you. I do absolutely appreciate everything you have done for me Lisa, been my rock at many of times. But I am very stressed at the moment with everything, I’m shouting at people I shouldn’t that’s just not you. I’m reacting in a way I don’t feel is right. But I need some space between us for a while. And get things right for the direction MEF want to take. My whole life is slowly falling apart, it’s time I did something about it.” *See* Counterclaim Exhibit P. Barbounis refused to accept Thomas’s decision to suspend or end their sexual relationship and threatened to tell Bishop, Thomas’s girlfriend, fiancée, or wife, about their affair. *See* Exhibit A. She would soon make good on this threat.

On March 7, 2019, Barbounis acknowledged that the money that Thomas had taken from MEF was misappropriated and threatened to reveal what he had done: “Now that I know I’m obligated to tell my work [MEF]. What do I do? That’s theft.” *See* Counterclaims Exhibit Q.

Despite this knowledge and threat, Barbounis never told MEF about the stolen funds and instead, she used her knowledge of the stolen funds as leverage over Thomas in an effort to force him to continue their sexual relationship. *See* Counterclaims Exhibit A.

In fact, Barbounis expressly threatened Thomas that, if he refused to continue their sexual relationship, she would inform MEF about the stolen funds. *Id.* Thomas reports that when he told Barbounis about his intention to end their sexual relationship, Barbounis replied, that “she was somehow going to make it come out and fuck my life up and get me, uh, you know, using that as a, as a way of trying to keep me in contact with her.” *Id.* Barbounis’ threats to Thomas were effective, as Thomas relented and allowed Barbounis to visit him in the United Kingdom once more in Spring of 2019.

Barbounis’ threats to Thomas were effective, as Thomas relented and allowed Barbounis to visit him in the United Kingdom once more in Spring of 2019. When asked about this trip, Barbounis told Pipes that her trip to visit Thomas was actually a vacation with her children, which was a lie. After Barbounis’ visit with Thomas in Spring of 2019, Thomas once again terminated their sexual relationship, thwarting a major component of Barbounis’ plans to move to the United Kingdom. *See* Counterclaims Exhibit A.

Incensed by Thomas’s decision to end their relationship and instead remain with Bishop, Barbounis launched an extended campaign of extreme harassment and psychological abuse directed toward Bishop, the mother of Thomas’s three children. *See* Counterclaims Exhibit A. Barbounis falsely told Bishop that her affair with Thomas was continuing in an effort to undermine Bishop’s trust in Thomas and her efforts to rebuild their relationship, and made many other harassing and derogatory comments to Bishop in writing, to embarrass, threaten, ridicule, intimidate, and silence Bishop which include the following:

- “But you know deep down because you’re a fucking idiot. I’m telling you right now you keep this up you’re gonna lose this one. And I am totally enjoying it.” *See* Exhibit S.
- “He dogged you to me in texts you read. He slept with me and came home to you. He posted pics of your kids with our songs. And lied to you the WHOLE time. I’m the one who told your everything and you still think I’m the liar. You are totally insane.” *Id.*
- “I am going to galas with the Vice President today. You think I care about two welfare losers [sic]”. *Id.*
- “I’ll protect him but don’t want him. I have no relationship with you. The only reason I ever showed you anything in the first place was because I was sick of all the lies. But since you refuse to go anywhere there’s not benefit in that for me. It’s all a cost benefit analysis. And there is no return on my investment from showing you anything.” *Id.*
- “That’s why it’s so funny for me you get all angry and call me all these names but deep down it’s all because you know how awesome I am and it scares you. You see me as a threat to your life. And if you didn’t think that I had any power over you or Danny you wouldn’t be messaging me.” *Id.*

The harassment of Bishop by Barbounis also included voice mail messages in which Barbounis said the following, among other things:

- “Oh, but I do. I really do, because you were so pathetic and sad, you told me all of it. You poor thing. Have another abortion, you whore [laughter]. *See* Exhibit T.
- “I went to an Ivy League school twice and I work for Congress, she’s plenty proud. You mom’s a junkie that puts fucking drugs up her snatch. What a loser.” *Id.*
- “Ha! Absolutely, positively not. Absolutely not. And I have proof. If he wants to call me, tell him. Because I’m free to ruin both your lives. It’s not a problem for me at all.” *Id.*
- “It’s pathetic. Really is. You can’t stop yourself. No self esteem or self control. No sense of pride or self worth because there is no reason for it. You are trash. [laughing emoji].” *Id.*

On April 12, 2019, MEF received negative press coverage in the United Kingdom as a result of Barbounis' continuing unauthorized political work with Robinson. *See* Counterclaims Exhibit U. In response, Pipes confronted Barbounis about her political associations and frequent travel, his concern that she did not clear her continued work for Robinson with him, and his belief that she was too caught up in and focused on her activities with Robinson at the expense of her work for MEF. *See* Counterclaims Exhibit V. Pipes asked that Barbounis not surprise him with her travels and made clear that he was not convinced that she was focused on the tasks agreed upon in November 2018. *Id.*

On May 6, 2019, Bishop, fed up with Barbounis' harassment and denigration, wrote to Pipes: "Are you aware that Lisa was and possibly still is having an affair with Danny [Thomas]? I have all the evidence feel free to ask and I will send it." *See* Counterclaims Exhibit W. Thomas reports that, around this time, Bishop called Roman and left him a voice mail on his office machine concerning the affair between Barbounis and Thomas, but Barbounis intercepted the voice mail message and deleted it before Roman could listen to it. *See* Counterclaims Exhibit A

Despite prior warnings from Pipes, Barbounis continued to work for Robinson, now out of jail and running for a seat in the European Parliament. In May 2019, as a result of her work for Robinson, MEF received significant news coverage claiming that MEF was "meddling in British/EU politics," and referring to Barbounis as a Director of MEF. *See* Counterclaims Exhibit X. An article in the Guardian newspaper on May 17, 2019 spoke of Barbounis in the Robinson campaign, the author noting, "There has been a more surprising presence at Robinson's rallies, however: Lisa Barbounis, a senior executive of the conservative US thinktank the Middle East Forum, has been a central figure on Robinson's campaign team and present at

many of his rallies, the Guardian has learned. Her exact role is unclear but Barbounis, who says she has worked on several Republican campaigns including John McCain's run for president in 2008, has been on the trail with Robinson for about a fortnight." *See* Counterclaims Exhibit Y. As a 501(c)(3) organization, MEF is subject to strict legal controls concerning its use of funds and involvement in political activities. Barbounis' activities with Robinson violated these controls and threatened to cost MEF its non-profit status.

As a result of her actions that jeopardized MEF's non-profit status, Pipes emailed Barbounis on May 28, 2019, concerning her poor work performance and political association: "In my April 16 note to you, I wrote 'Please don't surprise me with your travels.' But then it turns out the Guardian had a mole who spotted you at three separate Tommy Robinson rallies; that definitely counts as a surprise. From now on, you need express permission from me before engaging in MEF travel and you must also clear with me any personal travel that includes a political agenda." *See* Counterclaims Exhibit Z. Pipes also reprimanded Barbounis for her continued poor work performance, including her failure to get articles out on time to MEF subscribers; her failure to improve her public stature; her failure to improve the composition of MEF's staff, her failure to increase publications; her failure to hold monthly conference calls for subscribers; her failure to increase YouTube videos; and her failure to make weekly reports. *Id.*

Barbounis continued to disregard Pipes's directives. On June 5, 2019, Pipes again wrote to Barbounis: "The Guardian article from May 17 has a long, insinuating paragraph about you along with a picture of you. The clear implication is that MEF supports Tommy Robinson's campaign. This rates as both a surprise and an unwelcome complication. The article could entirely disappear but it could also pop up in the future and make trouble for us. I do not want potential trouble hanging over us, so am displeased. You and I have already discussed the matter

of your affiliating MEF too closely with Tommy Robinson and we reached an informal agreement that you would stay away from his efforts. Given this development, I am now imposing a formal limitation on you: No campaign work, even during your private time, without clearance from me.” *See* Counterclaims Exhibit AA. Two days after receiving this admonishment, Barbounis filed an Charge of Discrimination against MEF with the Equal Employment Opportunity Commission.

Disregarding Pipes’ clear instructions, on July 1, 2019, Barbounis appeared in a press release concerning Robinson’s political campaign. The press release included full contact information for Barbounis. *See* Counterclaims Exhibit BB. On July 16, 2019, Barbounis again ignored Pipes’ instructions and used MEF resources to send out political communications in her role as “Director of Communications” for TR.News, where TR stands for Tommy Robinson. *See* Counterclaims Exhibit CC.

On July 24, 2019, Barbounis completed an application and submitted her resume for a job with the United States Congress. As part of her application, Barbounis knowingly and falsely stated that, "Since entering my role as Director of Communication for the Middle East Forum I have increased our social media engagement by 32%. From June 2018 through June 2019, I helped place 1,128 articles by 56 experts in 97 outlets, from D.C.'s influential The Hill to the Wall Street Journal, from The Washington Times to Foreign Policy. Additionally, I arranged for 27 of our experts to be interviewed 92 times by 81 media outlets on both radio and television ranging from outlets like I24 News and Al Jazeera to Fox News." *See* Counterclaims Exhibit DD. Despite these false representations, Barbounis submitted her application and certified “that all of the foregoing information that I supplied in this submission form and resume is correct and complete. I UNDERSTAND THAT ANY FALSIFICATION OR OMISSION OF ANY

INFORMATION CONSTITUTES GROUNDS FOR ANY HOUSE OF REPRESENTATIVES EMPLOYER TO NOT EMPLOY ME OR TO DISMISS ME FROM EMPLOYMENT." *Id.*

Barbounis secured employment as Director of Communications in the United States House of Representatives for Congressman Randy Weber and on August 7, 2019, Barbounis resigned from MEF to accept this position. Thomas reports that Barbounis used her position in the House of Representatives in October of 2019 to threaten Bishop and Thomas, including statements that she attended events with the Vice President of the United States, was now "in a position of power" and asking, "Do you know who I work for?" *See* Counterclaims Exhibit A.

On September 24, 2019, Matthew Ebert, boyfriend of Marnie Meyer, called Roman via an unlisted, private number as an "anonymous source" with the stated intention of "blowing the lid off an employment litigation action by former employees" of MEF. *See* Counterclaims Exhibit EE. Ebert told Roman that the women involved in the lawsuit are all "banking on a large settlement," and that the other women involved had questioned Barbounis' motivations for suing. *Id.* The following day, Ebert called Roman ten times to convey the same message, which aligns in all significant detail with what Thomas has independently reported to MEF. Although neither MEF or Roman knew the identity of the caller at the time the calls were placed, Ebert has since admitted in testimony under oath that he placed the calls to Roman. *See* Counterclaims Exhibit FF.

On October 27, 2019, Barbounis filed the instant lawsuit which, on information and belief, was based on her plan, as divulged to Thomas, to bring false allegations against MEF and Roman for the purpose of obtaining a monetary settlement to fund her move to the United Kingdom. Notably, the allegations in Barbounis' complaint are substantially similar to those she told Thomas that she planned to make up against MEF and Roman.

On July 13, 2020, Thomas spoke at length with Gregg Roman and divulged, in striking detail, the facts surrounding Barbounis' knowledge of the misappropriated MEF funds, her actions in attempting to cover it up, and her harassment of Thomas and Bishop in order to conceal her wrongdoing. *See* Counterclaims Exhibit A. On July 17, 2020, Thomas provided MEF with records of Barbounis' travel to Europe, which aligned with the previous information that he had provided. *See* Counterclaims Exhibit GG. On July 18, 2020 Thomas agreed to provide his phones to a third-party electronic discovery vendor for imaging, searching and review because, according to Thomas, the phones contained information relevant to MEF's claims and defenses, and agreed to testify voluntarily under oath. *See* Exhibit HH.

Two days later, after the electronic discovery vendor had arranged for pickup of Thomas' devices and in the midst of a discussion of about how to secure pickup on Thomas' phones, Thomas abruptly cut off contact with MEF without explanation, stating, "I'm sorry I can't tell you why but I can't be involved in this anymore. Please don't contact me again!" *Id.* Less than an hour later, Barbounis' counsel baselessly accused Roman of attempting to manufacture evidence.

MEF is currently attempting to ascertain the reason for Thomas' abrupt and unexplained decision to cut off communication and to rescind his agreement to sit for deposition and provide documents, but based on this newly discovered evidence, moves to add Counterclaims against Barbounis for breach of duty of loyalty, conspiracy and fraudulent misrepresentation.

B. Argument.

Leave to amend should be freely granted in accordance with Federal Rule of Civil Procedure 15(a). MEF's proposed Counterclaims will not cause Barbounis any unfair prejudice

and are not sought in bad faith or as a result of any dilatory motives or undue delay. MEF seeks this leave to amend in order to add its counterclaims as soon as it was able to confirm the pertinent facts set forth above, and within days after speaking with Daniel Thomas, who provided extremely pertinent and previously undisclosed information, and provided context to the documents on which MEF's Counterclaims are based. Further, MEF's proposed addition of claims against Barbounis for breach of duty of loyalty, conspiracy and fraudulent misrepresentation are not futile, as all three claims have been recognized in the Eastern District of Pennsylvania as valid, and MEF has adequately alleged and can ultimately establish the necessary elements for each claim. Finally, MEF's proposed amendments will not delay the trial of this matter, for which no date has yet been set.

1. Leave To Amend Should Be Freely Given.

In *Foman v. Davis*, 371 U.S. 178 (1962), the United States Supreme Court enunciated the general standard for determining whether to grant leave to amend:

If the underlying facts or circumstances relied upon by a [party] may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason -- such as undue delay, bad faith, or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. -- the leave sought should, as the rules require, be 'freely given.'

Forman, 371 U.S. at 182.

MEF's request for leave to amend to assert counterclaims is based on newly discovered evidence provided by Daniel Thomas and uncovered in documents and, as such, MEF's motion meets this standard and should be permitted.

2. MEF's Proposed Amendments Set Forth A Proper Subject Of Relief.

a. Breach of Duty of Loyalty

““The elements the plaintiff must prove in claim of breach of fiduciary duty are: (1) that the defendant negligently or intentionally failed to act in good faith and solely for the benefit of plaintiff in all matters for which he or she was employed; (2) that the plaintiff suffered injury; and (3) that the agent’s failure to act solely for the plaintiff’s benefit ... was a real factor in bring about plaintiff’s injuries.” *McDermott v. Party City Corp.*, 11 F. Supp. 2d 612, 626 n.18 (E.D. Pa. 1998) (internal quotations omitted). A claim for breach of the duty of loyalty requires a showing as to these same three elements, in addition to showing that a fiduciary or confidential relationship existed. *See Hill v. Best Med. Int’l, Inc.*, No. 07-1709, 2011 WL 5082208, at *21, 2011 U.S. Dist. LEXIS 123845, at *71-72 (W.D. Pa. Oct. 24, 2011). “Pennsylvania law dictates that an employee, as the agent of his employer, owes his employer a duty of loyalty.” *Synthes, Inc. v. Emerge Med., Inc.*, 25 F. Supp. 3d 617, 667 (E.D. Pa. 2014).

MEF’s counterclaim against Barbounis satisfies all necessary elements of a claim for breach of duty of loyalty. As an employee and director of MEF, Barbounis had a fiduciary duty to MEF, and also had duty to act in good faith and solely for the benefit of MEF in all matters for which she was employed. As set forth in detail above, Barbounis intentionally failed to act in good faith and solely for the benefit of MEF in all matters for which she was employed in numerous ways, but specifically by failing to disclose to MEF that Thomas had misappropriated MEF funds in breach of a contract with MEF, and by carrying out political activities on behalf of Robinson and others on MEF’s time and using MEF resources. Barbounis’ failure to act solely for MEF’s benefit was a real factor in injuries to MEF, including a loss of its resources resulting from Thomas’s misappropriation of MEF funds, a loss of its resources resulting from MEF paying Barbounis’ salary while Barbounis was working not for MEF but for other individuals

and entities, a loss of the value of its resources used or consumed by Barbounis in performing work not for MEF's benefit, and a diminishment in the value of MEF's reputation and standing in the community as a result of the negative publicity generated by Barbounis' activities.

b. Civil Conspiracy

Likewise, MEF's claim against Barbounis for conspiracy sets forth a proper subject of relief. "[A] claim of civil conspiracy in Pennsylvania contains the following elements: (1) a combination of two or more persons acting with a common purpose to do an unlawful act or to do a lawful act by unlawful means; (2) an overt act done in pursuance of the common purpose; and (3) actual legal damage." *Reese v. Pook & Pook, LLC.*, 158 F. Supp. 3d 271, 292 (E.D. Pa. 2016). To allege a plausible claim of civil conspiracy, a plaintiff must make "factual allegations of combination, agreement, or understanding among all or between any of the defendants [or coconspirators] to plot, plan, or conspire to carry out the alleged chain of events." *Spencer v. Steinman*, 968 F.Supp. 1011, 1020 (E.D.Pa.1997) (citation and internal quotation marks omitted).

As set forth above, Barbounis conspired with Thomas and, upon information and belief, other persons or entities, to deprive MEF of the benefit of its funds and in doing so, acted with a common purpose to misappropriate and conceal the misappropriation of MEF funds designated for a specific purpose. Specifically, Barbounis and her co-conspirators conspired to facilitate and conceal the misappropriation of MEF funds by Thomas for improper and unlawful personal use, and Barbounis committed overt acts in pursuance of this common purpose, including making misrepresentations to MEF concerning the misappropriation of funds, facilitating Thomas' misappropriation of those funds, and assisting Thomas in concealing the misappropriation of those funds from MEF. As a result of Barbounis' participation in this

conspiracy, MEF suffered actual legal damage, including but not limited to the loss of the funds misappropriated, the loss of the benefit of the funds which were issued for a designated purpose, and the loss of the benefit of its contract with Thomas concerning the use of the funds. In short, Barbounis and Thomas (and, on information and belief, unknown others) knowingly and intentionally acted in concert to plot, plan and conspire to carry out the above-described misappropriation.

c. Fraudulent Misrepresentation

Finally, MEF's claim against Barbounis for fraudulent misrepresentation sets forth a proper subject of relief. "In Pennsylvania, the elements of fraudulent misrepresentation are: (1) a representation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) the resulting injury was proximately caused by the reliance." *Gibbs v. Ernst*, 647 A.2d 882, 889 (Pa. 1994); *see also Bouriez v. Carnegie Mellon Univ.*, 585 F.3d 765, 771 (3d Cir. 2009).

Among other misrepresentations, Barbounis misrepresented to MEF that her trip to the United Kingdom in Spring of 2019 was a family vacation with her children when, in actuality, Barbounis had traveled to the United Kingdom to continue her sexual affair with Thomas and her unauthorized support of Robinson, which contravened repeated specific directives from MEF concerning her involvement with Robinson's campaign. In making this false misrepresentation, Barbounis intended that MEF would act to maintain her employment status, job duties and compensation with MEF, rather than terminating her employment based on her continuing and repeated disregard of MEF's directives. Barbounis knew that her misrepresentation was false at the time she made it and did so intentionally, making it fraudulent in nature. MEF, as Barbounis'

employer, was justified in relying on the misrepresentation by Barbounis and suffered actual damages as a proximate result of that reliance including unwelcome press and media coverage, reputational harms and loss of monies paid to Barbounis as a faithless servant.

3. MEF's Proposed Counterclaims Would Not Cause Undue Prejudice.

The “touchstone” in determining whether an amendment should be permitted is whether the non-moving party will be unduly prejudiced if the amendment is allowed. *See Lorenz v. CSX Corp.*, 1 F.3d 1406, 1414 (3d Cir. 1993). Undue prejudice is more than the prejudice inherent in any amendment that strengthens a party’s case. *See Kubic v. Packaging Corp. of Am.*, 1994 WL 144363 *1 (E.D. Pa. Apr. 18, 1994). Undue prejudice, in the context of Rule 15, “means undue difficulty or unfair disadvantage in defending an action because of a change of tactics or theories, such as when the opposing party would be deprived of the opportunity to present facts or evidence.” *Kubic*, 1994 WL 144363 at *1. *See also Deakyne v. Comm’rs. of Lewes*, 416 F.2d 290, 300 (3d Cir. 1969) (prejudice requires undue difficulty in proceeding as result of a party’s change in tactics or theories).

Here, no undue prejudice exists because there has been no undue delay or change in tactics by MEF. Rather, MEF has alleged from the beginning of this litigation that Barbounis’ claims against it were baseless and part of a scheme to defraud MEF. As such, Barbounis was on notice, from the very beginning, that MEF would attempt to gather the evidence necessary to defeat her claims and, if applicable, to seek redress for her misrepresentations.

To the extent there has been any delay in the discovery of the evidence giving rise to MEF’s motion, that delay is the result of Barbounis’ efforts to cover her tracks and conceal her activities with respect to MEF’s misappropriated funds, and to intimidate Thomas, Bishop and

others with relevant information from coming forward. Denying MEF's motion to amend would permit Barbounis to benefit, yet again, from her concealment of her conduct.

Procedurally, there is no prejudice. Allowing MEF to amend and assert its Counterclaims will not delay the trial of this matter, which is yet to be set. Further, Plaintiff filed an new and related complaint against MEF on or about June 18, 2020, and MEF's answer to this new filing is not yet due. Since all parties will conduct limited additional discovery in this action, there is no prejudice resulting from MEF's proposed amendments.

4. Justice Requires Allowing MEF To Amend.

As noted above, denial of MEF's request to amend to assert Counterclaims against Barbounis would allow Barbounis to benefit from their wrongdoing. As explained above, Barbounis engaged in a knowing and intentional effort to mislead MEF and to cover for her paramour's misappropriation of MEF funds, and when her actions were on the brink of disclosure, she threatened those who would shed light on her wrongful conduct. Unless MEF is permitted to assert its Counterclaims, Barbounis' threats will have succeeded.

C. Conclusion.

For the reasons set forth above, this Court should grant MEF's request for leave to amend its answer to assert Counterclaims to against Lisa Barbounis for breach of duty of loyalty, conspiracy and fraudulent misrepresentation.

Respectfully submitted,

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